



City of Franklin

Municipal Court

December 18, 2001

Senator Gary R. George
Fax: (608) 266-7381

Re: Assembly Bill 62

Dear Senator George:

I just received notice that AB 62 relating to local ordinance on drug paraphernalia is scheduled for a hearing December 18. Unfortunately, I was unable to either appear or get any message to you due to my just learning of the scheduled hearing.

I originally supported a similar bill in the last legislative session. I had made recommendations that I thought would be helpful. There are two categories and two penalty provisions: Under age 17 and over age 17. I do not know that the distinction is valid for ordinance violations. We do not make distinctions when it comes to small marijuana possession. I do not think there should be a distinction therefore for the drug paraphernalia possession. I also think that both violations should carry similar penalties.

The second category is in the difference in actual penalties for under age 17 and for over age 17. Why? There is still a distinction even in Assembly Bill 62. Would it not be more preferable if, upon conviction for any defendant under an ordinance violation, the court could do any one or all of the following: (a) assess a forfeiture; (b) suspend a driver's license; (c) order community service; and (d) order some form of AODA. What would be most helpful, in my opinion, would be to assess the forfeiture and defer suspending of any driver's license as a leverage for some form of AODA treatment. It appears to me that most cases need some form of leveraging in order to get defendants into these programs. If we believe in "treating" the individual as opposed to just punishing the individual (a distinction that is sometimes lost and also not appropriate), then there should be options available, and it should not depend upon the individual's age nor whether or not if it was marijuana or paraphernalia.

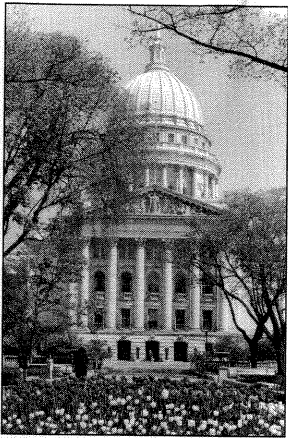
I therefore request that the Senate Judiciary Committee amend Assembly Bill 62 to treat both juveniles and adults the same for ordinance violations with the same penalties available for both and to eliminate the distinction between paraphernalia and drug possession. Thank you for your cooperation and efforts in this regard.

Very truly yours,

A handwritten signature in dark ink, appearing to read 'Ronald J. Wambach'.

Ronald J. Wambach

RJW:det



REPRESENTATIVE

S T E V E

FOTI

ASSEMBLY
MAJORITY LEADER

Authorizing Municipalities to Prosecute Drug Paraphernalia Violations

Senate Committee on Judiciary, Consumer Affairs and
Campaign Finance Reform

December 18, 2001

Chairperson George and members of the committee, thank you for the opportunity to testify this morning on this proposal.

Assembly Bill 62 permits counties, cities, villages and towns to enact and enforce ordinances prohibiting the possession, manufacture or delivery of drug paraphernalia by persons *over seventeen years of age*. Current law already allows cities, villages and towns to enact and enforce ordinances prohibiting these offenses, but they may only apply to persons *under 17 years of age*.

However, municipalities are not authorized to enact and enforce similar ordinances that apply to persons over seventeen years of age; only district attorneys may prosecute such cases.

Consequently, very few of these offenses committed by persons over seventeen years of age are prosecuted. DAs are simply too busy pursuing more dangerous criminals, and municipalities are not authorized to prosecute these cases. This legislation would close this loophole and prevent adult offenders from avoiding prosecution.

It is important that local units of government be provided with the flexibility to enact such ordinances and give the DA the option of pursuing the present criminal charges or a civil forfeiture. Many municipalities prefer to charge first-time offenses into municipal court because it is the least obtrusive for first-time offenders.

This legislation has strong bipartisan support, as well as the endorsement of judges, the Milwaukee County Sheriff's Office, the Alliance of Cities and the League of Municipalities. I urge your support of this legislation.

Thank you.

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To: Senator Gary George, Chair, Senate Committee on Judiciary, Consumer Affairs, and Campaign Finance Reform
Members of the Senate Committee on Judiciary, Consumer Affairs, and Campaign Finance Reform

From: Curt Witynski, Assistant Director, League of Wisconsin Municipalities

Date: December 18, 2001

Re: **Support for Assembly Bill 62**

The League of Wisconsin Municipalities supports Assembly Bill 62, authorizing municipalities to enact ordinances regulating adult possession of drug paraphernalia. Under current law, municipalities are only authorized to enact ordinances regulating juvenile use of drug paraphernalia. Municipal authority to regulate the adult use of drug paraphernalia was removed by the Legislature in 1990. This bill expressly restores such authority to municipalities. The bill passed the Assembly last March.

Under current law, an adult can be criminally charged for violating state statutes prohibiting the possession or delivery of drug paraphernalia. However, the practical reality is that district attorneys are not likely to use their limited time and resources to prosecute such charges. This bill, by allowing municipal ordinances governing drug paraphernalia to apply to adults, makes enforcement of the law less difficult and therefore more likely to occur. In part, this is because ordinance violations have a lower burden of proof than the proof beyond a reasonable doubt standard applicable in criminal cases. Also, prosecution of municipal ordinances can be accomplished in municipal courts, rather than circuit courts.

For the above reasons, the League urges you to recommend passage of AB 62. Thanks for considering the municipal perspective on this issue.